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SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONNA RIDGWAY and
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

JOINT PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE

PETITIONERS' BRIEF

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QUESTION PRESENTED FOR REVIEW

Whether the Supremacy Clause of the U.S. Constitution and the Servicemen's Group Life Insurance Act prohibit a state court from imposing a constructive trust on the proceeds of a Servicemen's Group Life Insurance policy for the benefit of the children of the deceased serviceman's prior marriage, where a state court divorce decree required him to designate the children as beneficiaries, and he subsequently designated another.

PARTIES

The names of all parties to the proceedings in the Supreme Judicial Court of Maine are set forth in full in the caption of the Petition for Writ of Certiorari. As docketed by the Clerk of this Court, the named parties are Donna Ridgway and (The) Prudential Insurance Company of America, Petitioners, and Hayley D. Ridgway, et al., Respondents. The additional Respondents are Hayley D. Ridgway's minor siblings, Laurie R. Ridgway and Brady L. Ridgway, all acting by and through their mother and next friend, April D. Ridgway.

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CITATION TO OPINION AND JUDGMENT BELOW

The Opinion and Judgment of the Supreme Judicial Court of Maine: 419 A.2d 1030 (Me. 1980)

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3). The judgment of the Supreme Judicial Court of Maine was entered on September 26, 1980, and the Petition for Writ of Certiorari was timely filed on December 23, 1980, pursuant to Rule 28.2 of the Rules of the Supreme Court of the United States. This Court's Order granting the Petition for Writ of Certiorari was filed on March 9, 1981.

CONSTITUTIONAL PROVISION INVOLVED

This Constitution, and the Laws of the United States which shall be made in pursuance thereof... shall be the supreme Law of the Land; and all the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

...

U.S. CONST., art. VI,cl.2.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The provisions of 38 U.S.C. §§ 717(a), 766, 770, and 3101(a), and 38 C.F.R. §§ 9.1(h), 9.1(j), 9.16, 9.17, 9.20, 9.22(a) and 9.22(d) are set forth in the Appendix hereto.

STATEMENT OF THE CASE

Pursuant to 38 U.S.C. § 766, the Administrator of Veterans' Affairs purchased Servicemen's Group Life Insurance Policy No. G-32000 from The Prudential Insurance Company of America (hereinafter Prudential) effective September 29, 1965. The policy at issue was most recently amended on September 29, 1974. It is

specifically identified in the regulations adopted pursuant to 38 U.S.C. § 766. *See* 38 C.F.R. § 9.1(h).

Richard Ridgway, a career Army Sergeant, was insured under this Servicemen's Group Life Insurance (SGLI) policy for $20,000.00. Prior to his December 7, 1977, divorce from his first wife, April, Sergeant Ridgway had designated her as the beneficiary of that policy. The divorce decree provided, in relevant part:

> Defendant is ordered to keep in force the life insurance policies on his life now outstanding for the benefit of the parties' three children. If any of such insurance policies should subsequently be terminated for any reason, Defendant shall immediately replace it with other life insurance of equal amount for the benefit of the children.

(A. 14).

On March 28, 1978, Richard married Donna Ridgway. On April 3, 1978, Richard changed the beneficiary designation on the SGLI policy to direct that the proceeds be paid as specified "by law" and therefore to his wife at the time of his death. 38 U.S.C. § 770(a); 38 C.F.R. § 9.16(i). Following Sergeant Ridgway's death on January 5, 1979, both April Ridgway and Donna Ridgway filed claims under the policy.

Faced with the stated intention of the private insurance carrier to pay the policy proceeds to Donna, April Ridgway then instituted an action on behalf of her three children against Prudential in the Superior Court of Maine for Androscoggin County (A. 11). Donna subsequently joined the action voluntarily as a Plaintiff (A. 23, A. 24). Following consolidation of a preliminary injunction hearing with a final hearing on the merits (A. 38), the case was submitted to the trial court on stipulated facts. The Supremacy Clause question presented here was specifically raised as an affirmative defense in the trial court in Donna's Answer (A. 34), and fully briefed by all parties in the state trial and supreme courts.

The superior court ruled that federal law gave the insured serviceman an absolute right to designate or change the beneficiary of his SGLI policy, and that the Supremacy Clause of the federal constitution accordingly required payment of the proceeds to Donna despite the conflicting state court divorce decree. The superior court specifically refused to consider imposition of a

constructive trust on Donna, as sought by April, holding that it was powerless to consider this remedy under the Supremacy Clause and the subject federal statute (A. 42).

On appeal by April, the Maine Supreme Judicial Court reversed, holding that by granting servicemen the absolute right to select their beneficiaries, 38 U.S.C. § 770(a) did not embody a federal interest sufficient to constitute pre-emption; that the anti-attachment provisions of 38 U.S.C. § 770(g) did not apply to this case since the equitable interest claimed by Sergeant Ridgway's minor children did not amount to the claim of a "creditor;" and that the federal statute and regulations did not "prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children." 419 A.2d 1030, 1033. The Maine court declared:

> In the absence of an express congressional mandate or the decision of a court which we are bound to follow, we consider ourselves obligated to enforce the valid decree of our state courts.

419 A.2d at 1035.

As previously stated, the superior court had ruled that the Supremacy Clause precluded consideration of a constructive trust without indicating whether it would have imposed such a trust had it the power to do so. On appeal, the stipulated sole issue before the Maine Supreme Court was whether the superior court justice had "erred in ruling that, on the basis of the facts found, he *could not* impose a constructive trust on the proceeds of Sergeant Ridgway's insurance." (A. 48) (emphasis supplied). Holding that nothing in the literal language of the statute, the legislative history or the case law prohibited the imposition of a constructive trust, the Maine Supreme Court chose not to remand to the superior court with instructions to re-evaluate the case in light of this potential remedy it had declared to be available. Rather, it established the trust on its own initiative and remanded with directions to issue an order imposing a constructive trust on the policy proceeds, 419 A.2d at 1035, thus pre-empting further consideration by the trial court.

SUMMARY OF ARGUMENT

I. The federal statute by which the Servicemen's Group Life Insurance (SGLI) program was established sets forth an unequivocal order of precedence by which policy benefits are to be paid, unless the serviceman has made an express beneficiary designation. Regulations adopted in furtherance of the statute emphasize that absolute adherence to the prescribed requirements for beneficiary designations is mandatory. Cases decided under the SGLI statute, in which the insurer is a private carrier, emphasize strict compliance with the statutory and regulatory requirements for beneficiary designations to a greater degree than did prior programs under which the government was the insurer.

Both current and prior military life insurance programs insure that the properly designated beneficiary will receive the policy proceeds and retain them free from collateral attack. 38 U.S.C. § 770(g); 38 U.S.C. § 3101(a). All the requirements for a proper beneficiary designation having been met in this case, the policy proceeds should be paid to the statutorily prescribed beneficiary, Donna Ridgway.

II. Under the Supremacy Clause, federal statutes and regulations adopted pursuant to a power expressly granted to Congress will pre-empt inconsistent state action. The SGLI statute does not state that conflicting state action is precluded. However, an examination of the clear statutory language makes it obvious that state action inconsistent with the federal statutory and regulatory provisions governing SGLI constitutes an impermissible obstacle to the "full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67(1941).

This Court, in *Wissner v. Wissner*, 338 U.S. 655 (1950) held that a state community property claim against the proceeds of an earlier, similar form of military life insurance (National Service Life Insurance or "NSLI") was not a sufficient basis to enforce a divorce decree requiring payment of the proceeds to one other than a beneficiary correctly designated under the federal statute. The federal statute was then held to pre-empt the conflicting divorce decree. Whether a state court order founded on considerations of alimony or child support would constitute a sufficient basis to avoid pre-emption was expressly left open in *Wissner*. Such a proposition should be rejected by this Court. The plain

SGLI wording mandating the order of precedence for payment, and the sweeping protection of the statutory spendthrift provisions, compel the conclusion that the federal program at issue here pre-empts conflicting state action such as the divorce decree below. Recent actions by this Court and Congress bearing on other forms of federal employee benefits are consistent with strict construction of the federal statute and regulations governing military life insurance, and pre-emption of inconsistent state action. E.g., *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979).

III. The mandate of the Maine Supreme Court, by imposing a constructive trust on the SGLI proceeds in the hands of the designated beneficiary, constitutes token acknowledgment that the insurer has correctly paid the nominal beneficiary, but circumvents the statutory objective by awarding the ultimate benefit of the proceeds to others. This judicial intrusion into the federal military insurance program frustrates both the objectives of Congress and the intent of the deceased serviceman. No reported case has been discovered where a constructive trust has been imposed on proceeds of either the present SGLI or earlier NSLI policies to effect a result contrary to that intended by the insured serviceman. This Court should reject the aberrant use of this equitable device by the Maine court, as it will inevitably lead to a flood of litigation ensnaring not only the individual claimants but also the insurer, whether before or after payment to the designated beneficiary.

ARGUMENT

I. FEDERAL LAW REQUIRES THAT A PROPERLY COMPLETED SGLI BENEFICIARY DESIGNATION BE STRICTLY HONORED

The trial justice below correctly ruled that under the federal law governing SGLI policies (38 U.S.C. §§ 765 et seq.), and the regulations promulgated thereunder, the insured serviceman is given "the absolute right to designate any person or legal entity as beneficiary of his life insurance policy" (A. 41). The justice found that the state court divorce decree requiring payment to the minor children was inconsistent with the absolute right conferred by federal statute, and subordinate to the federal law. In so ruling, the court specifically found that "[f]ederal law gives Donna Ridgway a legal right to the proceeds of this insurance policy. The equitable power of the Court cannot interfere with this positive federal law by imposing a constructive trust." (A. 42). (citing *Weymann v. Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970)).

In reversing the trial court, the Maine Supreme Court relied solely on cases involving private insurance contracts to support its creation of a constructive trust, undoubtedly because there are no federal military life insurance cases which support its ruling. In a number of private insurance cases, courts have intervened to overturn a decedent's beneficiary designation and have imposed a constructive trust on the beneficiary and/or the insurance proceeds where the insured's beneficiary designation contravened a requirement of a property settlement agreement or divorce decree. *See, e.g., McKissick v. McKissick*, 93 Nev. 139, 144, 560 P.2d 1366, 1369 (1977); *Simonds v. Simonds*, 45 N.Y.2d 233, 237, 380 N.E.2d 189, 191, 408 N.Y.S.2d 359, 361 (1978); *Richards v. Richards*, 58 Wis. 2d 290, 298, 206 N.W.2d 134, 138 (1973). All these private life insurance cases are inapposite in the context of military life insurance for the reasons discussed below.

A. History of Military Life Insurance

Provision of some form of life insurance has been a part of the federal program of benefits for its service personnel for many years, having been in existence at least as long ago as World War I when it was called U.S. Government Life Insurance (USGLI) or

War Risk Insurance. E.g., *United States v. Williams*, 302 U.S. 46 (1937); *Kaschefsky v. Kaschefsky*, 110 F.2d 836 (6th Cir. 1940); *Claffy v. Forbes*, 280 F. 233 (W.D. Wash. 1922). A similar program was offered during World War II and the Korean War era through a program known as National Service Life Insurance (NSLI) *see, e.g., Wissner v. Wissner*, 338 U.S. 655 (1950); *Burgess v. Murray*, 194 F.2d 131 (5th Cir. 1952).

Following the Korean War there was an interruption in military life insurance coverage; from 1957 to 1965 service personnel were not covered by any federal life insurance unless they had retained government life insurance issued prior to April 25, 1951. In 1965 Congress created the Servicemen's Group Life Insurance program by enactment of Pub. L. No. 89-214, 79 Stat. 880, codified at 38 U.S.C. §§ 765 et seq.

B. Comparison of National Service Life Insurance Act With Servicemen's Group Life Insurance Act

Although the Servicemen's Group Life Insurance Act (SGLIA) differs from the predecessor National Service Life Insurance Act (NSLIA) in that the government is no longer the insurer, the provisions of each act conferring upon the serviceman an absolute right to designate and change beneficiaries are nearly identical. 38 U.S.C. § 717(a) of NSLIA, like § 770(a) of SGLIA,[1] confers that right in express terms. Additionally, § 770(a) provides an order of precedence of beneficiaries in the absence of an effective designation. The absolute nature of the serviceman's right to control the proceeds of his policy under each act is further guaranteed under substantially identical provisions, 38 U.S.C. § 3101(a) for NSLI, and § 770(g) for SGLI.

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[1] 38 U.S.C. § 770(a): Beneficiaries - Payment of insurance - (a) Any amount of insurance under this subchapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's

§ 3101(a)

Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments *made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.* The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title or of servicemen's indemnity. For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited (emphasis supplied).

§ 770(g)

Payments of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance *made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.* The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 769(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments (emphasis supplied).

Group Life Insurance, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

SGLI differs from past military insurance programs in that under SGLI the government is not directly the insurer. Under the SGLI form of insurance, the Administrator of Veterans' Affairs is empowered to contract with a qualified primary commercial insurer for a group life insurance policy. Group Policy G-32000 is such a policy. 38 C.F.R. § 9.1(h). The commercial insurer administers the program under the supervision of the Veterans' Administration. 38 U.S.C. § 766(b); 38 C.F.R. § 9.1(j), § 9.22(a), § 9.22(d) (1975).

A second and critical distinction between SGLI insurance and prior military life insurance is the congressional intent, as construed in judicial review of the legislative history, to overrule prior administrative policy toward previous forms of military insurance. That policy historically permitted liberal construction of rules governing the designation or change of beneficiaries. *Senato v. United States*, 173 F.2d 493 (2d Cir. 1949); *Bew v. United States*, 286 F.2d 570 (4th Cir. 1961). *See generally*, Annot., 13 ALR Fed. 6, § 10 (1972).

Since the advent of SGLI insurance, managed by a private carrier, strict compliance with procedural requirements has been the rule. The lower courts have recognized that the congressional intent behind this policy change was "to avoid thrusting upon the private insurance carriers undue administrative burdens." *Stribling v. United States*, 419 F.2d 1350, 1354 (8th Cir. 1969). Regulations implementing the legislation emphasize the absolute finality of a properly executed SGLI beneficiary designation. 38 C.F.R. § 9.16(a),(f). "Congress determined that such regulations were necessary to make the Servicemen's Group Life Insurance program administratively feasible, and the Court is not in a position to question that wisdom." *Stratton v. Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119, 1122 (S.D. Iowa 1976).

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of his death.

C. Strict Beneficiary Designation Requirements Emphasized by SGLI Regulations

To effectuate the congressional intent that the strict procedural requirements of 38 U.S.C. § 770 be absolutely determinative of parties' rights under SGLI policies, the Veterans' Administration adopted a stringent set of regulations. They emphasize in detail the necessity of strict adherence to the statute, and the finality of a beneficiary designation prepared and filed in accordance with the statute and regulations. Subsection (d) of 38 C.F.R. § 9.16 sets forth the fundamental requirements for proper designation of an SGLI beneficiary:

> (d) Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service or if executed during a period of coverage following separation or release from duty...

Subsection (e) of the regulations emphasizes the absolute discretion in the insured serviceman to make and change beneficiaries:

> (e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary.
>
> 38 C.F.R. § 9.16(e)

The regulations stress that only properly executed and received documents will be effective to change a beneficiary designation:

> (f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.
>
> 38 C.F.R. § 9.16(f)

D. Legislative Intent

The Maine court has given its own narrow reading to the legislative history, seizing upon one statement by the Administrator of Veterans' Affairs, when the Senate Finance Committee and the House Veterans' Affairs Committee were considering separate military life insurance proposals (ultimately consolidated into the SGLIA) Pub. L. No. 89-214, § 1(a), 79 Stat. 880-885 (1965), and codified in 38 U.S.C. §§ 765-776. The Maine court cited a portion of the Administrator's statement which pointed out how the pending House bill (H.R. 10873) would remedy certain deficiencies in military benefit programs which then existed in lieu of life insurance. [1965] U.S. Code Cong. & Ad. News 3232, 3242, 3243. These remarks were in no way directed toward the beneficiary designation provisions of the proposed legislation, which the Administrator affirmatively stated "would be payable to the designated beneficiary or beneficiaries selected by the insured." *Id.* p. 3242.

Nonetheless, the Maine court construed the Administrator's comments as defining the *only* purposes of the legislation, reading the legislative history of the Servicemen's Group Life Insurance Act to disclose only limited objectives—to make life insurance available to servicemen without war exclusion clauses, to make survivorship benefits available to parents of deceased servicemen without the necessity that the parents meet a "needs" test, and to permit servicemen to provide protection for other individuals without any showing of dependency. 419 A.2d at 1033. The court failed to note, however, numerous indications in the legislative history that a primary purpose of the Act was to give the serviceman the right to select his beneficiary, and to change that beneficiary without consent of any prior beneficiary. [1965] U.S. Code Cong. & Ad. News 3232, 3236, 3240, 3241-42, 3243. Thus limiting its consideration of the legislative history, the court below found no barrier to its imposition of a constructive trust for the benefit of parties other than the designated beneficiary.

This perspective on the legislative intent is not supported by a review of the legislative record and judicial decisions. In *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969), the Court of Appeals reviewed the legislative history of the Servicemen's Group Life Insurance Act in comparison with the analogous Federal Employees' Group Life Insurance Act of 1954, Pub. L.

No. 598 ch. 752, 68 Stat. 736 et seq. as amended; 5 U.S.C. §§ 8701 et seq. The nearly identical language of the beneficiary designation sections of the two Acts was emphasized by the court, which then noted that the beneficiary designation section of the Federal Employees' Group Life Insurance Act (analogous to § 770(a) of SGLIA) was later amended to state specifically that designations, changes or cancellations of beneficiaries in wills or other documents not complying with the statutory requirements for execution and filing would be disregarded. The purpose of the amendment was "to clarify Congress' intent," 419 F.2d at 1354, quoting S. Rep. No. 1064, 89th Cong. 2d Sess., *reprinted in* [1966] U.S. Code Cong. & Ad. News 2070, 2071.

While finding no such express intent in the SGLIA as enacted, the Eighth Circuit held that the legislative intent underlying the parallel FEGLI legislation was properly transposable to an interpretation of the SGLIA. The court thus applied the strict construction requirements of the FEGLI statute to beneficiary designations made under the SGLIA. In so holding, the court was not constrained by the fact that Congress had not amended 38 U.S.C. § 770(a) contemporaneously with its amendment of the analogous FEGLI section. It rejected the contention that the absence of such an amendment to the SGLIA demonstrated congressional approval of a liberal construction policy in SGLIA beneficiary determinations. The court held that it was merely casting the same clarification of Congress' intent upon the SGLI Act, and held in favor of a strict construction of the beneficiary designation requirements of 38 U.S.C. § 770(a). 419 F.2d at 1355.

At the time *Stribling* was decided the regulations now embodied in 38 C.F.R. § 9 had not yet been adopted. They were published January 28, 1975. 40 Fed. Reg. 4135 (1975). Section 9.16(f) provides:

> (f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, *or in any other document* shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.

(Emphasis supplied)

Thus, the express language which the Eighth Circuit felt it did not require in order to rule in favor of strict statutory construc-

tion has since been added to the interpretive regulations under SGLI, eliminating any possible argument whether SGLI designations should be strictly or liberally construed.

Congress unequivocally confirmed the *Stribling* court's judgment by its enactment of 38 U.S.C. § 770(g) in a 1970 amendment. Pub. L. No. 91-291, § 5, 84 Stat. 331. In so doing, Congress affirmatively extended protection to SGLI benefits analogous to that already afforded NSLI benefits under § 3101(a). The NSLI cases had uniformly held that the provisions of § 3101(a) would bar a claim for policy proceeds which was contrary to the insured serviceman's express intent, even when the claim was predicated upon an alimony or support order in a divorce decree. E.g. *Suydam v. United States*, 404 F.2d 1329 (D.C. Cir. 1968); *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968); *Eldin v. United States*, 157 F. Supp. 34 (S.D. Ill. 1957); *see generally*, Annot., 13 A.L.R. Fed. 6, § 9 (1972 and Supp. 1980).

The Maine court's opinion attempts to rationalize the substantial body of SGLI cases holding that the serviceman's right to make and change beneficiary designations is absolute, if carried out in compliance with the applicable statutes and regulations. Its discussion of *Stribling, supra, Prudential Insurance Co. of America v. King*, 453 F.2d 925 (8th Cir. 1971), and *Johnson v. Prudential Insurance Co. of America*, 182 Neb. 673, 156 N.W.2d 812 (1968), attempts to relegate these authorities to a category of mere procedural definitions, ignoring their clear substantive import which establishes the unqualified certainty of a properly executed SGLI designation. The Maine court's opinion offers no citation to any case decided under NSLI or SGLI in which the serviceman's properly completed beneficiary designation has been construed contrary to his express intent. A careful reading of the statute and regulations will lead this Court inevitably to the conclusion that a properly completed SGLI beneficiary designation must be strictly honored.

II. SINCE FEDERAL LAW PRE-EMPTS THE FIELD, A CONTRARY STATE COURT DIVORCE DECREE MUST YIELD

The Supremacy Clause of the United States Constitution establishes the fundamental principle that

> This Constitution and the laws of the United States which shall be made in pursuance thereof... shall be the supreme law of the land... anything in the Constitution or laws of any State to the contrary notwithstanding.
>
> U.S. Const. art. VI, cl. 2

The Maine court's opinion acknowledges this premise: "There can be no question that Congress has the power fully to pre-empt the field when legislating pursuant to one of the express powers granted to it in the Constitution." 419 A.2d at 1031. The power to provide for the national defense is such an express Constitutional delegation. U. S. Const. art. I, § 8. The opinion below recognizes that the SGLIA was enacted pursuant to that expressly delegated congressional power. 419 A.2d at 1031. Although the constitutional mandate of authority over national defense is express, the SGLIA, enacted pursuant to that power, does not patently state that it pre-empts the field and precludes state action. Where federal pre-emption is not manifested by the wording of federal statutes or regulations, it may nonetheless be obvious from an examination of the federal-state setting in which the federal action was taken. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157-58 (1978), and cases cited therein. One test by which pre-emption may be found is whether a specific state action "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress". *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The Maine court determined that its action presented no such obstacle. 419 A.2d at 1034-35.

It is fundamental that, if possible, Congress' intent in enacting a statute is to be determined by a plain reading of the statute itself. *S & E Contractors, Inc. v. United States*, 406 U.S. 1, 13-14, n.9 (1972); *United States v. Oregon*, 366 U.S. 643, 648 (1961); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 390-395 (1951); *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 543 n.18 (1940). Only if the legislative intent is not manifest from the statutory language is it necessary to consider secondary sources. The Maine court below ignored this fundamental principle of construction and the unequivocal language of § 770 of the SGLI Act, attempting to divine an implicit congressional purpose by extrapolation from a statement given for a limited purpose by one witness before a congressional committee. 419 A.2d at 1033.

This Court has yet to rule directly on the applicability of the Supremacy Clause to a case where an insured serviceman's properly executed military life insurance beneficiary designation is in direct disregard of a prior state court divorce order requiring the serviceman to name his children beneficiaries of the life insurance policy as part of his support obligation to them. In fact, the Court has not previously heard any case directly presenting substantive issues under SGLIA.

A. *Wissner v. Wissner*

In a case arising out of an NSLI policy, *Wissner v. Wissner*, 338 U.S. 655 (1950), this Court held that claims premised on state community property law could not defeat a serviceman's beneficiary designation. Such claims were held to conflict impermissibly with the NSLIA. The Court ruled that portions of the controlling federal statute give servicemen the absolute right to designate their beneficiaries; are a valid exercise of the federal congressional power over national defense; and displace contrary state property law. It further held that the spendthrift provisions of the Act (38 U.S.C. § 454a, now codified at 38 U.S.C. § 3101(a)) preclude state courts from ordering a serviceman's designated beneficiary to pay over proceeds to his widow.

In holding the asserted community property rights to be an insufficient basis for displacing the federal statutory provisions, this Court examined various state court decisions holding that provisions for exemption from attachment of the National Service Life Insurance Act and similar pensions and veterans' relief programs do not apply when alimony or support is in issue. The *Wissner* Court declined to engage in an extended discussion of those earlier cases from inferior courts, confining its ruling to the specific community property issue in the case before it, and finding that community property basis inadequate to overturn the beneficiary designation provisions established pursuant to the federal statute.

In its analysis, the Maine court noted the suggestion contained in *Wissner* that "a different result might obtain in cases involving alimony or support," 419 A.2d at 1033. The Maine opinion then set forth an excerpt from this Court's *Wissner* decision:

> [W]e must note that the community property principle rests upon something more than the moral obligation of supporting spouse and children: the business relationship of man and wife for their mutual monetary profit. [citation omitted] Venerable and worthy as this community is, it is not, we think, as likely to justify an exception to the congressional language as specific judicial recognition of particular needs, in the alimony and support cases.

419 A.2d at 1033, *quoting Wissner v. Wissner*, 338 U.S. at 660.

The opinion below omits the very next sentence of the *Wissner* opinion: "Our view of these cases, whatever it may be, is irrelevant here."

The *Wissner* Court continued, stating:

> And since the statute which made the insurance proceeds possible was explicit in announcing that the insured shall have the right to designate the recipient of the insurance, and that "No person shall have a vested right" to those proceeds, 38 U.S.C. § 802(i), appellee could not, in law, contemplate their capture.

338 U.S. at 661.

B. Pre-emption Applied to Other Federal Benefit Programs

In 1977, Congress enacted new Section 459 of the Social Security Act, 42 U.S.C. § 659, permitting attachment of certain benefits due from the United States or federal agencies to enforce alimony and child support obligations. In *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979), the 1977 amendment was held not to override the spendthrift provisions of the Railroad Retirement Act since the amendment defined alimony to exclude divisions of property between spouses.[2] The provisions of the Railroad Retirement Act therefore pre-empted state community property law. The 1977 amendment was limited to moneys "the entitlement to which is based on remuneration for employment" and to funds "due from or payable by, the United States or the District of Columbia," and so has no effect on SGLI benefits, which are neither based on

[2] 45 U.S.C. § 231m.

remuneration nor paid by the government.[3] By expressly authorizing the attachment of these specific forms of federal payments only, and by not acting to affect any other form of federal employment benefit, Congress implicitly recognized that all such benefits otherwise subject to federal spendthrift protection continued to be free from attachment notwithstanding the 1977 amendment.

As distinguished from the instant case, *Hisquierdo*, like *Wissner*, determines competing interests in federally created fringe benefits by invoking the pre-emption doctrine to reject a claim based on state community property law. *Hisquierdo* is nevertheless significant here because it holds the federally defined interest to pre-empt a competing claim founded on a state court decree.

While there may be a valid public policy permitting attachment of federal retirement benefits for alimony and child support purposes, the underlying federal policy considerations in providing military life insurance to servicemen free of restrictions on their beneficiary designations are of a substantially different and more compelling nature. The hazards of active military service are, without more, sufficient basis for offering benefits unique to servicemen, including the right to take absolute action to protect those who are the objects of the serviceman's financial preference. As this Court observed in *Wissner*:

> Certainly Congress in its desire to afford as much material protection as possible to its fighting force could wisely provide a plan of insurance coverage. Possession of government insurance, payable to the relative of his choice, might well directly enhance the morale of the serviceman. The exemption provision is his guarantee of the complete and full performance of the contract to the exclusion of conflicting claims. The end is a legitimate one within the congressional powers over national defense, and the means are adapted to the chosen end. The Act is valid.

338 U.S. at 661.

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[3]Although, unlike SGLI, NSLI benefits are paid by the government, presumably the 1977 amendment does not affect NSLI recipients since the proceeds are not based on remuneration. *See generally* Annot., 44 A.L.R. Fed. 434 (1979); Annot., 93 A.L.R. 3d 711 (1979).

The foregoing discussion of the pre-emption doctrine as applied to federal employee benefits is premised on a background of federal statutory spendthrift protection of those benefits. The Federal Employees' Group Life Insurance Act, 5 U.S.C. § 8701 et seq., is similar to the SGLIA in many respects but contains no spendthrift provision analogous to 38 U.S.C. § 770(g) or § 3101(a). One court has held that in the absence of such a statutory prohibition it was not precluded from imposing a constructive trust on the proceeds of a Federal Employees' Group Life policy in the hands of a beneficiary other than one mandated by a state court divorce decree. *Roberts v. Roberts*, 560 S.W.2d 438, *error ref. n.r.e.* (Tex. Civ. App. 1977).

C. Other Pre-emption Cases Concerning Military Life Insurance

Lower courts which have considered the beneficiary designation provisions have universally held that the federal SGLI statute and regulations will prevail over conflicting state law. *E.g., Johnson v. The Prudential Insurance Co. of America*, 182 Neb. 673, 156 N.W.2d 812 (1968). Federal statutes governing military insurance have uniformly been held to control disposition of the proceeds, notwithstanding contradictory state court divorce decrees. *Stratton v. Servicemen's Group Life Insurance Co.*, 422 F. Supp. 1119 (S.D. Iowa 1976); *Suydam v. United States*, 404 F.2d 1329 (D.C. Cir. 1968); *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968); *see generally* Annot., 13 A.L.R. Fed 6, § 9 (1972 and 1980 Supp.).

In enacting the SGLI program, Congress not only provided for re-entry of the federal government into the servicemen's life insurance field; it pre-empted the field. *The Prudential Insurance Co. of America v. King*, 453 F.2d 925 (8th Cir. 1971); *Stratton v. Servicemen's Group Life Insurance Co., supra.* 38 U.S.C. § 770(a) clearly establishes the order of precedence for payment of SGLI benefits. By providing that the subject benefits be paid "by law," the decedent in this case achieved the effect of paying the benefits to his widow, in the absence of any other specifically designated beneficiary.

Although prior to the Maine court's decision below no case from a state court of last resort or federal court of appeals has considered the impact of a state court divorce decree on the serviceman's rights under the newer SGLI form of policy, cases

decided under the nearly identical NSLI statute clearly establish legislative intent to pre-empt any such interference. Decisions to date under the SGLI statute, while not reaching a divorce case, have carried forward without exception the rule of pre-emption laid down in NSLI cases. The decision of the Maine Supreme Court in this case conflicts in principle with cases decided under the earlier statute (including those passing on enforceability of an inconsistent divorce decree), as well as those cases decided to date under SGLI. The decision below creates uncertainty by refusing to apply precedent established in NSLI cases to a familiar fact pattern when presented under the newer SGLI statute.

Relying on the right-to-designate provisions of 38 U.S.C. § 717(a), the Ninth Circuit decided in *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), that a divorce decree requiring a husband to maintain his ex-wife as beneficiary under each of two NSLI policies impermissibly conflicted with the congressional intent to pre-empt such interference. The Court of Appeals for the District of Columbia concurred in *Suydam v. United States*, 404 F.2d 1329 (D.C. Cir. 1968), specifically rejecting a constructive trust theory like the one urged by Respondents here.

The Supreme Court of North Carolina reached a similar result even earlier in *Williams v. Williams*, 255 N.C. 315, 121 S.E.2d 536 (1961), reasoning that a state court divorce decree preventing the insured from designating anyone other than his ex-wife amounted to a prohibited assignment under 38 U.S.C. § 3101(a). In accord is *Fleming v. Smith*, 64 Wash. 2d 181, 390 P.2d 990 (1964), *aff'd* 69 Wash. 2d 277, 418 P.2d 147 (1966).

The rule of pre-emption sometimes works in favor of the former spouse. In *United States v. Donall*, 466 F.2d 1246 (6th Cir. 1972), although a Michigan statute and the serviceman's divorce decree both served to cut off his ex-wife's rights in any insurance policy, the Sixth Circuit ruled that the statutory beneficiary provisions of the NSLI policy pre-empted the inconsistent state law and decree, observing:

> It is well established that questions respecting the proper beneficiaries under NSLI policies are governed by federal law rather than state divorce law or state court divorce decrees.

466 F.2d at 1247. *Accord, Taylor v. United States*, 459 F.2d 1007 (9th Cir.), *cert. denied* 409 U.S. 967 (1972). The Sixth Circuit had ruled previously in a case involving United States Government Life Insurance that an insured veteran retained the right to change beneficiaries following divorce, and that a contrary state court decree amounted to an assignment prohibited by 38 U.S.C. § 3101(a). *Kimball v. United States*, 304 F.2d 864 (6th Cir. 1962). Assignment of SGLI benefits is similarly prohibited under 38 C.F.R. § 9.20.

In a few cases, the spendthrift provisions of 38 U.S.C. § 3101(a) have been extended to cases where an ex-spouse sues the insured's estate on a breach of contract theory, attempting to circumvent the many cases holding that an insured serviceman retains an absolute right to change beneficiaries. Courts which have considered this argument have divided on its applicability. *Compare McJunkin v. Estate of McJunkin*, 493 S.W.2d 278, *error ref. n.r.e.* (Tex. Civ. App. 1973); *Harris v. Harris*, 94 Idaho 358, 487 P.2d 952 (1971), *with Will of Hilton*, 88 Misc. 2d 760, 388 N.Y.S. 2d 985 (Surr. Ct. 1976).

The superior court in the present case suggested in dictum that April might have a cause of action against Richard's estate (A. 42). Although that remedy appears to afford one in April's position the most logical avenue for relief, the issue was not litigated in this action at either level below, and has not been preserved for review by this Court.

D. Pre-emption Reasoning of Maine Supreme Court

The Maine Supreme Court's opinion sidestepped the pre-emption issue entirely; it simply concluded that on the facts before it, the statutes and existing case law should not be read to create any conflict between the federal statutory and regulatory scheme and the requirements of the subject state court divorce decree. The court stated,

> We cannot see how imposing a constructive trust to enforce a valid judicial decree implementing the serviceman's voluntary agreement to name his minor children as the beneficiaries of his SGLI policy can in any way frustrate or impede the accomplishment of any legitimate federal objective. Nor do we find anything in the literal language of the statute or in its

legislative history which would prohibit such action. 419 A.2d at 1035.

The Maine court's conclusion on the pre-emption issue is predicated on its misapprehension that the congressional purpose underlying the SGLIA is not readily apparent from the statute itself. It held that in the absence of a constitutional grant of an express power to Congress, the question of federal pre-emption becomes a comparative exercise to determine whether the state action at issue "stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." 419 A.2d at 1032, *quoting L. Tribe, American Constitutional Law*, 377 (1978); in turn *quoting Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Having concluded that no federal-state inconsistency existed, the Maine court held that the Supremacy Clause therefore presented no constraint on its action.

The direct response to the Maine court's holding on the pre-emption question is that the congressional intent on the issue of SGLI beneficiary designations is manifestly clear, requiring no detailed comparative study of the interrelationship between the federal statutory and regulatory system and the stated intent of the Maine Supreme Court to determine if the latter is an "obstacle" to the federal purpose. The words of § 770(a) and § 770(g), given their ordinary meaning, could not constitute a stronger statement for the unfettered right of an insured serviceman to designate whatever beneficiary he wishes (§ 770(a)), with the assurance that the proceeds of such insurance will be protected from "attachment, levy, or seizure by or under *any legal or equitable process whatever, either before or after receipt by the beneficiary*." § 770(g) (emphasis supplied). If it remained possible to doubt the congressional intent in view of the patent language of the statute, any such doubt would have been removed by the Veterans' Administration's adoption of § 9.16 of the regulations, captioned "Beneficiaries and options." If, as the *Stribling* decision suggests, Congress had been silent to that time regarding its intent in enacting certain SGLI provisions, that intent was expressed by the enactment of § 770(g) in 1970 and the adoption of 38 C.F.R. §§ 9.16(d), (e) and (f), *inter alia*, in 1975. Since each of these actions demonstrates a strong congressional intent that the serviceman's rights under SGLI remain unrestricted, and since the imposition of a constructive trust in this case totally

negates that freedom, the holding below that this state equitable remedy presents no "obstacle to the accomplishment and execution of the full purposes and objectives of Congress" defies logic. The ruling below clearly does frustrate the congressional intent, and must be reversed.

III. IMPOSITION OF A CONSTRUCTIVE TRUST WOULD THWART THE INTENT OF CONGRESS AND OF THE INSURED SERVICEMAN

Until the decision of the Maine Supreme Court below, no reported case has been found which approves the imposition of a constructive trust on the proceeds of SGLI insurance. The Maine court cited no SGLI case in support of its decision to impress this equitable remedy on the military insurance proceeds. Indeed, in the only reported SGLI case in which a constructive trust was one of the remedies sought, the court specifically refused to impose it. *Weymann v. Wilson*, 320 F. Supp. 980 (M.D. Fla. 1970). The district court's cryptic disposition of the prayer for such equitable relief unfortunately offers little insight into the rationale for its conclusion. *Id.* at 989.

A. Constructive Trust Remedy Limited to Private Life Insurance

Before the Maine Supreme Court, April pressed the argument that non-SGLI cases may be cited supporting imposition of a constructive trust on insurance benefits to effectuate a state court divorce decree. These cases fall into two categories. The first involves disputes between the first wife and children of a deceased insured and the second wife, all of whom claim entitlement to private contract life insurance proceeds. The weight of authority embodied in these cases supports the contention that a constructive trust may be imposed for the benefit of the children of the first marriage where the decedent has acted in violation of a valid state court divorce decree. However, a critical feature distinguishes those cases from that at bar; all of the cases cited by April arise out of private insurance contracts. *E.g., Equitable Life Assur. Soc. v. Wilkins*, 44 F. Supp. 594 (E.D. N.Y. 1942); *Great American Reserve Ins. Co. v. Maxwell*, 555 P.2d 988 (Colo. App. 1976); *Massachusetts Linotyping Corp. v. Fielding*, 312 Mass. 147, 43 N.E. 2d 521 (1942); *McKissick v. McKissick*, 93 Nev. 139, 560

P.2d 1366 (1977); *Simonds v. Simonds*, 45 N.Y.2d 233, 380 N.E. 2d 189 (1978); *Hundertmark v. Hundertmark*, 372 Penn. 138, 93 A.2d 856 (1952). Some of the contracts are group policies, and some individual, but none is a contract issued under authority of a federal statute and federal regulations implementing that statute, as is the case in this action. While these citations might be compelling in another context they are simply inapposite to the issue at bar.

The only case which even appears relevant to the issues presented here is *Gutierrez v. Madero*, 564 S.W.2d 185 (Tex. Civ. App. 1978). In that case, the original insurance policy on the decedent's life had been an SGLI policy. Gutierrez had converted his military policy to a private policy with similar benefits. When he and his wife were subsequently divorced, he was directed by the divorce decree to keep the private policy in force for the benefit of his three children, but later named his mother as beneficiary. His ex-wife sought to impose a constructive trust on the insurance proceeds and to obtain a judicial declaration that her children were entitled to the proceeds under the state court divorce judgment.

On appeal, a lower court ruling adverse to the minor children was reversed. In so ruling, the appellate court specifically predicated its decision on the holding that 38 U.S.C. § 770 was inapplicable where SGLI insurance had been converted to a private policy. The court refused to apply the specific exemptions from ancillary attack provided by 38 U.S.C. § 770(g) to successor private policies, and thus a constructive trust for the benefit of the minor children was ordered. Since the court's ruling makes it clear that imposition of this equitable device was possible only because the policy had been removed from the scope of the federal statutory coverage, the case has no direct relevance to the issues in this action, except as it implicitly supports the position taken by Donna and Prudential.

B. Two Constructive Trusts Imposed to Effect Serviceman's Express Intent

The second group of cases offered below by April concerns military life insurance (in each case NSLI coverage), but only two such decisions were cited. In each of these, *Voelkel v. Tohulka*, 236 Ind. 588, 141 N.E.2d 344, *cert. denied*, 355 U.S. 891 (1957),

and *Burgess v. Murray*, 194 F.2d 131 (5th Cir. 1952), a constructive trust was imposed on the proceeds of military life insurance in favor of persons other than the beneficiary technically designated by the insured. In both of these cases the correctly designated beneficiary refused to distribute the policy proceeds in accordance with the clearly expressed wishes of the insured, which had been fully documented in extrinsic writings.

Voelkel v. Tohulka involved a policy issued to a serviceman under the National Service Life Insurance Act of 1940. The defendant, a sister of the serviceman, had agreed that if her brother named her the beneficiary on his NSLI policy she would divide the proceeds among all his brothers and sisters, including herself. Following the sister's refusal to pay the proceeds in accordance with this agreement, the siblings demanded payment and requested that the court impose a constructive trust on the recalcitrant sister.

After reviewing the obvious unjust enrichment of the defendant who had acted improperly in refusing to pay the proceeds to her siblings, the court found the situation appropriate for utilization of a constructive trust. However, in doing so, it emphasized that it was imposing such a trust in order to carry out the intent of the deceased insured serviceman. The court held, "We see nothing in this section [38 U.S.C. § 454a] which indicates that Congress desired to prevent the raising of a trust *where it is done to carry out the deceased soldier's intent.*" 236 Ind. at 593, 141 N.E.2d at 346 (emphasis supplied).

Following its review of the controlling precedents, the *Voelkel* court reemphasized the critical importance of honoring the insured's dispositive intent before imposing a constructive trust. The court concluded,

> There appears no impediment in the National Service Life Insurance Act of 1940, 38 U.S.C. § 801, *supra*, directly opposing the imposition of a trust on funds after they are received by a beneficiary in the interest of a proper disposition of the proceeds *in comformity with the wishes of a deceased soldier*, if the facts exist which, under other principles of equity, would raise a trust.

236 Ind. at 595, 141 N.E.2d at 347 (emphasis supplied). On the facts of that case, the court then specifically imposed a construc-

tive trust on the sister.

Burgess v. Murray, 194 F.2d 131 (5th Cir. 1952) also arose out of dispute over distribution of proceeds of a National Service Life Insurance Policy. In that case the father of the insured serviceman was the designated beneficiary. Subsequent to designation, however, the insured had written a careful letter to his father stating that he wanted the father to hold any insurance proceeds for the benefit of the insured's children. After the serviceman died, the father also died before receiving any benefits under the policy. The insured's sister was paid partial benefits before a claim was filed on behalf of the insured's minor children. The district court found the letter from the serviceman to his father sufficient to change the beneficiary designation from the father to the insured's children. On appeal, the Fifth Circuit stated, "We are of the opinion that the decree of the lower court was in accord with the desire of the insured...." 194 F.2d at 132. In affirming the lower court decision, the court thus approved the utilization of a constructive trust specifically for the purpose of effecting the intentions of the insured.[4]

The Maine court cited with approval several of the private contract cases discussed in the first grouping above, 419 A.2d at 1031, but curiously omitted any reference whatsoever to the more relevant *Voelkel* and *Burgess* cases, which imposed constructive trusts only to effect the most recent statement of the servicemen's intent.

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[4]There have been additional cases arising under still earlier service life insurance contracts to the same general effect as the *Voelkel* and *Burgess* cases. E.g., *Kaschefsky v. Kaschefsky*, 110 F.2d 836 (6th Cir. 1940). In that case the Sixth Circuit approved a lower court decision in which it had been found that

> The deceased veteran, having done all that was within his power to do to effect the change in the beneficiary named in the insurance contract, the defendant, when he undertook to receive the payments due thereunder and to distribute them to the beneficiaries *intended by the deceased to receive them*, was acting as a trustee for the other beneficiaries. 110 F.2d at 837-38 (emphasis supplied). *See also Claffy v. Forbes*, 280 F. 233, 235 (N.D. Wash. 1922).

C. Intent of the Insured

In examining an NSLI case, *Hoffman v. United States*, 391 F.2d 195 (9th Cir. 1968), the Maine court distinguished the present case by pointing out that the *Hoffman* ruling upheld the beneficiary designation of a veteran "unwilling" to maintain his former wife as beneficiary, *Id.* 419 A.2d at 1034, whereas the court deemed Sergeant Ridgway to have been "not unwilling" because he had agreed in the divorce action to maintain his military life insurance in force for the benefit of his children.[5] Sergeant Ridgway's status thus distinguished, the court felt no constraint to imposition of a constructive trust on the insurance proceeds. This conclusion ignores the entire line of cases collected in Annot., 13 A.L.R. Fed. 6, § 9, in many of which the serviceman had first indicated his "willingness" by entering into a pre-divorce agreement with his spouse, but had later designated another beneficiary contrary to the agreement and divorce decree. Yet in all these cases in which a constructive trust was sought, the designated beneficiary prevailed and the demand for a constructive trust was specifically rejected. *E.g., Heifner v. Soderstrom*, 134 F. Supp. 174 (N.D. Iowa 1955); *Harris v. Harris*, 94 Idaho 358, 487 P.2d 952 (1971).

Of course, the imposition of such a constructive trust is totally at odds with the clear intent of the insured in the present case, even if the stringent standards governing SGLI beneficiary designations permitted imposition of constructive trusts in cases based on such policies. *See Stribling v. United States, supra.* Sergeant Ridgway had to be aware of the content of the divorce judgment requiring him to maintain life insurance policies in effect for the benefit of his minor children. He took deliberate action when, on April 3, 1978, he changed the prior beneficiary designation on his SGLI policy to make the proceeds payable "by law" and thus to his new wife, Donna. No further change of beneficiary designation was made on Sergeant Ridgway's policy from that date until his death several months later. The intent of the insured serviceman was thus clearly determinable as of April 3, 1978, and

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[5]No written property settlement agreement had been entered into by the parties, nor was any such agreement formally incorporated into the divorce judgment. Any such pre-judgment agreements were oral. *See Suydam v. United States*, 404 F.2d 1329 (D.C. Cir. 1968).

properly ascertained as of the date of his last valid beneficiary designation. Any "intent" he may have had in making prior designations or other previous commitments is irrelevant to the issues in this case. Since the imposition of a constructive trust on the proceeds of his SGLI insurance by the Maine Supreme Court directly contravenes Sergeant Ridgway's obvious intent, the decision below ordering this remedy should be reversed and the proceeds ordered paid to the properly designated beneficiary, Donna Ridgway.

D. Maine Precedent Invites Increased, Unproductive Litigation

In the Maine Supreme Court, April did not argue for the relief which she had sought in her original complaint against Prudential; that the insurer should be barred from paying the policy proceeds in any equitable or legal manner to Donna (A. 11). Rather, she limited her prayer to the constructive trust argument advanced in her cross claim against Donna and in Count II of her complaint against Prudential, filed as an amendment to the original complaint. She contended that while Prudential should not be precluded from paying the policy proceeds to Donna, the correctly named beneficiary, the imposition of a constructive trust on Donna and the proceeds should be accompanied by the court's order directing that the policy proceeds be paid to April.

Although nowhere affirmatively stated, the opinion of the Supreme Judicial Court of Maine implicitly acknowledges the statutory correctness of Prudential's action, and limits its consideration of an equitable remedy to one potentially directed against Donna. See, for example, its statement that a state court is not barred "from using its equitable power to reach the proceeds *in the hands of the statutory beneficiary.*" 419 A.2d at 1033 (emphasis supplied). Again, in a footnote, the Maine court discusses the imposition of a constructive trust "on the insurance proceeds *received by the designated beneficiary.*" 419 A.2d at 1034 (emphasis supplied).[6] Thus, by concession of April and indirect acknowledgement of the Maine court, the insurance carrier's payment to

[6]Although the Maine court imposed a constructive trust on the policy proceeds, it directed no equitable order to Donna Ridgway *in personam* as the proceeds had been paid into court prior to the state supreme court phase of the case. (A. 60).

the properly designated beneficiary has been recognized as correct. Prudential seeks this Court's confirmation that it has correctly discharged its obligations under the statute.

However, correct payment or proposed payment by the insurer to the properly designated beneficiary in no way limits the potential for litigation, as this case well illustrates. Absent a directive from this Court, an administrative decision by the insurer to pay the designated beneficiary and leave any aggrieved claimant to challenge the payee directly will continue to produce litigation among parties having various legal relationships with insured servicemen. See the cases filed since the Maine court's *Ridgway* decision, discussed *post* at pp. 30 - 32. The potential for such litigation is fueled by the contentious attitudes of contemporary American society.

It is not logical for the Maine court to suggest that the SGLI carrier may properly pay the designated beneficiary while at the same time guaranteeing, in effect, that substantial numbers of these payee-beneficiaries will become certain defendants in subsequent lawsuits brought by ex-spouses or other guardians of children of deceased servicemen. The inevitable litigation will enmesh the SGLI insurer both before or after payment to the properly designated beneficiary, with the predictable allegation (and accompanying punitive damage demands) that the carrier has, or is about to, intentionally and willfully pay the wrong party. Such involvement in litigation, whether well founded or not, will generate needless administrative costs ultimately reflected in premiums, and perhaps the unwillingness of private insurers to underwrite military life insurance at all.

IV. DONNA'S RIGHT TO RECEIVE THE POLICY PROCEEDS IS PROTECTED BY 38 U.S.C. § 770(g)

The Maine Supreme Court found the spendthrift provisions of 38 U.S.C. § 770(g) inapplicable, holding that equitable claims of the minor children did not amount to a claim by "creditors," an exception never recognized in the NSLI cases. Its ruling on this point is entirely unsupported by authority. This holding ignores the plain language of the statutory section which goes beyond a mere prohibition against creditors' claims. The sentence structure of the cited section is illuminating:

> Payment of benefits . . . shall be exempt from taxation, shall be exempt from the claims of creditors, *and* shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, *either before or after receipt by the beneficiary.*

38 U.S.C. § 770(g) (emphasis supplied).

The section defines three separate classes of exemptions, set off by commas from each other, and clearly disjunctive. Creditors' claims are but one of the classes from which the proceeds are exempt. No stronger declaration of the serviceman's right to be free from all restraint can be imagined. The only exceptions to this statutory bar to claims against SGLI proceeds are those specifically enumerated in the next sentence of § 770(g):

> The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under Section 769(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

By carving out only these three narrow exceptions to the general exemption from legal process defined by § 770(g), Congress has emphasized the universality of the exemption. Conspicuously absent from the listed exceptions are any references to alimony, child support, or contrary divorce decrees.[7] Other than the three foregoing narrow administrative exceptions, the exemption from ancillary process provided by § 770(g) is absolute, and all the comparable NSLI cases have so held.

An analgous attempt by an ex-wife to distinguish herself from the class excluded by another federal spendthrift provision was rejected by this Court in *Hisquierdo*. It should be noted that the spendthrift provision of SGLIA is even broader than that of the Railroad Retirement Act at issue in *Hisquierdo*. The latter protects federal pension benefits from "legal process" only, while 38

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[7] *Cf.* 5 U.S.C. § 8701; 42 U.S.C. § 659 (certain federal benefits subject to attachment to enforce alimony and support claims, see p. 16, *supra*); 11 U.S.C. § 523(a) (5) (alimony and support obligations not dischargeable in bankruptcy).

U.S.C. § 770(g) precludes both legal and equitable remedies. This distinction is important in light of this Court's observation in *Hisquierdo* that judicial constructions permitting diversion of federal benefits for purposes of support were "a child of equity, not of law." 439 U.S. at 586.

The ruling by the Maine Supreme Court below that the federal statute and regulations "do not prevent a state court from using its equitable power to reach the proceeds in the hands of the statutory beneficiary for the benefit of the serviceman's minor children," 419 A.2d at 1033, circumvents federal law in a manner prohibited by *Wissner* and *Hisquierdo*. It employs the artifice of a constructive trust to direct payment of the insurance proceeds to the nominal beneficiary authorized by statute, but diverts the policy proceeds to others immediately upon receipt by the statutorily correct designee.[8]

V. RECENTLY FILED CASES EVIDENCE THE UNSETTLED STATE OF THE LAW FOLLOWING THE DECISION BELOW

Although lower courts have, prior to the instant case, universally upheld the insured serviceman's absolute right to designate his beneficiary under both NSLI and SGLI forms of military insurance, the competing demands of claimants whose cause is predicated on state court divorce decrees are being heard with increasing frequency and force.

There have been only two reported cases in which constructive trusts were imposed on the proceeds of National Service Life Insurance, (and only where necessary to effect the serviceman's intent; *Voelkel v. Tohulka* and *Burgess v. Murray, supra*) and no reported cases where the constructive trust remedy has been imposed on SGLI proceeds in contravention of a proper beneficiary designation. Prior to this case, the 15 year history under SGLI has produced no reported decisions by state courts of last resort or lower federal courts (other than a passing reference in

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[8]The California decision in *Milhan v. Milhan*, 13 Cal. 3d 129, 117 Cal. Rptr. 809, 528 P.2d 1145 (1974), *cert. denied*, 421 U.S. 976 (1975), threatened to undercut *Wissner* by giving a divorcing spouse an "offsetting" award of property to make up for the exclusion of service life insurance. That decision was disapproved by this Court in *Hisquierdo*, however.

Weymann v. Wilson, supra), in which the issue of a constructive trust to effectuate a state court divorce decree has been litigated.

Whether spurred by the recently reported decision by the Maine court in this case, or whether due to an increasingly litigious populace or whatever other reason, there has been a sudden outburst of cases nearly identical to the one at bar. When the Petition for Writ of Certiorari in this case was filed on December 23, 1980, there was pending *Nixon v. Prudential Insurance Co. of America* (Circuit Court, 10th Judicial Circuit of Alabama, Docket No. CV-80-501-044).[9] The court in that case entered an order on October 2, 1980, specifically staying further proceedings pending determination of the present case.

On December 26, 1980, counsel for Petitioners were informed that a case with facts virtually identical to this case had been filed in the United States District Court for the Northern District of Florida. It is *Helen Burks v. Prudential and the United States*, P.C.A. No. 80-0560. In that case, the divorced former wife of a serviceman insured under SGLI has brought an action against Prudential and the Department of the Air Force. She seeks to enforce a state court divorce decree which required the serviceman to designate and maintain his children as beneficiaries of his SGLI policy, notwithstanding his subsequent designation of another beneficiary (his new wife).[10]

Still more recently, on March 27, 1981, there was filed in the Superior Court for the County of San Bernadino, California an action entitled *Angela Ann Wichmann et al. v. Janie W. Wichmann and Prudential Life Insurance Co. of America* (Docket No. 202331). The complaint in that case alleges facts which again nearly duplicate those in the present case. In *Wichmann*, the parties had actually executed a property settlement agreement which was incorporated into the subsequent divorce decee, a condition not present in the instant case. The prayer for relief states that defendant Janie Wichmann would be a constructive trustee if the proceeds were to be distributed to her prior to order of court, and therefore seeks creation of an express trust by the court.

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[9]This case was noted in the Petition for Writ of Certiorari at p. 10.

[10]This case was identified to the Court in Petitioners' Supplemental Brief in support of their Petition for Writ of Certiorari.

Finally, on April 7, 1981, a case entitled *Barbara Jean Burk v. Prudential Insurance Co. of America* (Docket No. 81-33356-CK) was filed in the Circuit Court for the County of Kent, Michigan. (This action is totally independent of the recently filed Florida *Burks v. Prudential* case, *supra*, in which the plaintiff coincidentally has a nearly identical last name.) The only relevant difference between the fact pattern of the Michigan case and the instant case is that in *Burk* the serviceman failed to name his son as beneficiary of his SGLI policy, as required by the divorce decree, but took no affirmative action to designate his subsequent wife or anyone else. In the absence of a designation the SGLI proceeds are payable, on the serviceman's death, to the present wife under the order of precedence established under 38 U.S.C. § 770(a). Thus, the same legal effect is created as that brought about by Richard Ridgway's "by law" designation in the case at bar. Establishment of a constructive trust for the benefit of the minor child is expressly sought by Ms. Burk.

Since its decision in *Wissner* 30 years ago, this Court has denied certiorari in four NSLI cases and one SGLI case. In none of these was the pre-emptive effect of either federal act permanently undermined. *Voelkel v. Tohulka, supra*, applied a constructive trust to effectuate the serviceman's intent, thus enhancing rather than restricting his rights under federal law. The Fifth Circuit in 1967 ruled that state law gave the guardian of an incompetent serviceman power to change his ward's beneficiary, turning to state law for a rule of decision where the federal act offered no guidance. *Roecker v. United States*, 379 F.2d 400 (5th Cir.), *cert. denied sub nom. Tighe v. Roecker*, 389 U.S. 1005 (1967). In 1972, the Ninth Circuit held that the NSLI statute pre-empted a divorce decree purporting to divest the serviceman's ex-wife of any interest in his estate or any property owned by him. *Taylor v. United States*, 459 F.2d 1007 (9th Cir.), *cert. denied*, 409 U.S. 967 (1972). The California decision in *Milhan v. Milhan*, 13 Cal. 3d 129, 117 Cal. Rptr. 809, 528 P.2d 1145 (1974), *cert. denied*, 421 U.S. 976 (1975), threatened to undercut *Wissner* by giving a divorcing spouse an "offsetting" award of property to make up for the exclusion of service life insurance. That decision was disapproved by this Court in *Hisquierdo*, however. Another California case, this time under the SGLI statute, held that a divorcing serviceman did not demonstrate intent to change the beneficiary of his existing SGLI policy by naming his mother beneficiary on his applica-

tion for conversion of the policy. *Hill v. Hill*, 23 Cal. App.3d 760, 100 Cal. Rptr. 458, *cert. denied*, 409 U.S. 1006 (1972).

Hill and *Voelkel* involved no real state-federal conflict. *Roecker* incorporated state guardianship law where federal law was silent. *Taylor* found the federal statute to pre-empt an inconsistent divorce decree, and the lower court's attempt in *Milhan* to circumvent pre-emption was curtailed by this Court in *Hisquierdo*.

The Maine court's decision in this case is the first to hold squarely that federal law on this subject does not overrule a state court divorce decree mandating a result different from that produced by one acting in reliance on the federal statute. The Maine court has baldly asserted that its holding produces no pre-emption issue, because it is not inconsistent with the federal legislative purpose. 419 A.2d at 1035. Petitioners urge this Court to hold the issue to be squarely one of pre-emption, and to resolve that issue in favor of Donna Ridgway and Prudential.

CONCLUSION

For the reasons presented above, the decision of the Maine Supreme Judicial Court should be reversed, and this Court's Order issued to direct payment of the proceeds of Sergeant Ridgway's SGLI policy to Donna Ridgway.

Respectfully submitted,

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APPENDIX
A. STATUTES—38 U.S.C.

38 U.S.C. §717(a): Insurance maturing on or after August 1, 1946.—The insured shall have the right to designate the beneficiary or beneficiaries of insurance maturing on or after August 1, 1946, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries.

38 U.S.C. §770: Beneficiaries—Payment of insurance—(a) Any amount of insurance under this sub-chapter in force on any member or former member on the date of his death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance, or (2) in the administrative office established under section 766(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemen's Group Life Insurance, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of his death.

(b) If any person otherwise entitled to payment under this section does not make claim therefor within one year after the death of the member or former member, or if payment to such person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if

such person had predeceased the member or former member, and any such payment shall be a bar to recovery by any other person.

(c) If, within two years after the death of the member or former member, no claim for payment has been filed by any person entitled under the order of precedence set forth in this section, and neither the Administrator nor the administrative office established by the insurance company or companies pursuant to section 766(b) of this title has received any notice that any such claim will be made, payment may be made to a claimant as may in the judgment of the Administrator be equitably entitled thereto, and such payment shall be a bar to recovery by any other person. If, within four years after the death of the member or former member, payment has not been made pursuant to this section and no claim for payment by any person entitled under this section is pending, the amount payable shall escheat to the credit of the revolving fund referred to in section 769(d).

(d) The member may elect settlement of insurance under this subchapter either in a lump sum or in thirty-six equal monthly installments. If no such election is made by the member the beneficiary or beneficiaries may elect settlement either in a lump sum or in thirty-six equal monthly installments. If the member has elected settlement in a lump sum, the beneficiary or beneficiaries may elect settlement in thirty-six equal monthly installments.

(e) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his uniformed service under prior provisions of law will be effective with respect to the increased insurance authorized under the Veterans' Insurance Act of 1974 and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance heretofore in effect.

(f) Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer.

(g) Payments of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall

not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 769(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

38 U.S.C. §3101(a): Nonassignability and exempt status of benefits.—Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity.

For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving his or her benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

B. REGULATIONS—38 C.F.R.

§ 9.1 Definitions.

(h) The term "policy" means Group Policy No. G-32000, effective September 29, 1965, purchased pursuant to subchapter III of

chapter 19, title 38, United States Code, from the insurer, which was executed and attested on December 30, 1965, and amended on May 24, 1974.

(j) The term "administrative office" means the Office of Servicemen's Group Life Insurance located at 212 Washington Street, Newark, NJ 07102, which is the administrative office established pursuant to 38 U.S.C. 766(b) by the insurer.

§9.16 Beneficiaries and options.

(a) A member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary.

(b) Any designation of beneficiary or election of optional settlement made by any member insured under Servicemen's Group Life Insurance for full-time coverage or part-time coverage will remain in effect, until properly changed by the member or automatically canceled, under the following rules:

(1) If the insurance terminates following separation or release from all duty in a uniformed service.

(2) If the member enters on duty in another uniformed service.

(3) If the member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service.

(c) If the member acquires Veterans' Group Life Insurance effective on the day folowing termination of his or her Servicemen's Group Life Insurance, any beneficiary designation in effect from the Servicemen's Group Life Insurance shall be considered a designation of beneficiary for Veterans' Group Life Insurance but not for more than 60 days after the effective date of the Veterans' Group Life Insurance, unless at the end of the 60-day period, the insured is incompetent in which event such designation may continue in force until the disability is removed but not for more than 5 years after the effective date of such insurance.

(d) Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service or if executed during a period of coverage following separation or release from duty under § 9.5(a) or § 9.7 (a) or (b), or for coverage under § 9.1(a)(3) or Veterans' Group Life Insurance by the administrative office.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary.

(f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.

(g) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his or her uniformed service in effect on May 24, 1974, will be effective with respect to the increased amount of insurance authorized on May 24, 1974, by Pub. L. 93-289 (88 Sta. 165) and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance theretofore in effect.

(h) In any case in which a member separated or released from all obligation to perform duty in a uniformed service reenters on duty after a break in service while covered during the period of protection afforded under § 9.5(a) or § 9.7 (a) or (b) after termination of duty and waives coverage or elects coverage in the amount of $15,000, $10,000 or $5,000, an existing designation of beneficiary or election of optional settlement is not canceled with respect to any amount of insurance not replaced upon such reentry on duty.

(i) The insurance proceeds will be paid to the person or persons surviving the insured member in the following order of precedence:

(1) To the beneficiary or beneficiaries designated (see paragraph (d) of this section).

(2) If there be no such beneficiary, to the widow or widower. Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer;

(3) If none of the above, to the child or children and descendants of deceased children by representation;

(4) If none of the above, to the parents or the survivor of them;

(5) If none of the above, to the executor or administrator of the estate of the insured; or

(6) If none of the above, to other next of kin in accordance with

the laws of the State wherein the insured member was domiciled at date of death.

(j) The insured member may elect in writing that settlement of the insurance proceeds be made either in a lump sum or in 36 equal monthly installments. If no election is made or the member elects that payment be made in a lump sum, the beneficiary may elect at the time of the member's death either mode of settlement. An election to be effective must be received before the member's death by the appropriate office as specified in paragraph (d) of this section.

§ 9.17 Taxation and exemption.

Section 770(g), title 38, United States Code provides that payment of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (a) collection of amounts not deducted from the member's pay, or collected from the member by the Secretary concerned under 38 U.S.C. 769 (a), (b) levy under subchapter D, chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (c) the taxation of any property purchased in part or wholly out of such payments.

§ 9.20 Assignments

Servicemen's Group Life Insurance, Veterans' Group Life Insurance and benefits thereunder are not assignable.

§ 9.22 Administrative decisions

(a) Determinations of the Veterans Administration are conclusive under the policy with respect to the following:

(1) The status of any person being within the term "member"

and whether or not he or she is covered at any point of time under the policy including "traveltime" under § 9.5(b)(3) and death within 120 days thereafter from a disability incurred or aggravated while on duty under § 9.7(b).

(2) The fact and date of a member's termination of active duty, or active duty for training, and the fact, date and hours of a member's performance of inactive duty training.

(3) The fact and dates with respect to a member's absence without leave, confinement by civilian authorities under a sentence adjudged by a civil court, or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances.

(4) The operation of the forfeiture provision provided in 38 U.S.C. 773 and § 9.34 with respect to any member.

(5) The existence of total disability or insurability at standard premium rates under § 9.7(a) and (b).

(d) Questions for determination under this section as well as those involving coverage of groups and classes of members and other questions are properly referable to the Assistant Director for Insurance. Authority to make any determinations required under this section is delegated to the Chief Benefits Director and/or Assistant Director for Insurance.